IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 738 of 1999

For Approval and Signature:

HONOURABLE MR.JUSTICE A.M.KAPADIA

HONOURABLE MS.JUSTICE H.N.DEVANI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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ARVINDBHAI LAXMISHANKAR SHARMA - Appellant(s)
Versus
STATE OF GUJARAT - Respondent(s)

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Appearance :
THROUGH JAIL for Appellant : 1,MS SADHANA SAGAR for Appellant : 1,
MR AJ DESAI ADDL.PP. for Respondent

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CORAM : HONOURABLE MR.JUSTICE A.M.KAPADIA

and

HONOURABLE MS.JUSTICE H.N.DEVANI

Date : 22-10/19-11-2007

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE A.M.KAPADIA)

1. Challenge in this appeal filed under Section 374 of the Code of Criminal Procedure ('the Code' for short) is to the correctness of the judgment and order dated 9.7.1999 rendered in Sessions Case No. 195 of 1996 by the learned Additional Sessions Judge, Surat, Camp at Vyara, by which the appellant ('the accused' for short) has been convicted for commission of the offence punishable under Section 302 of the Indian Penal Code ('IPC' for short) and sentenced to suffer imprisonment for life and fine of Rs.400/- i.d., simple imprisonment of one month for the offence punishable under Section 302 IPC whereas he has been acquitted for commission of the offence under Section 135 of the Bombay Police Act ('BP

Act' for short).

2. The prosecution case as disclosed from the FIR and unfolded during trial is as under:

2.1. As per the allegations made in the complaint lodged by Akubhai Surjibhai Gamit, who has died subsequently, the prosecution case is that he was staying with his wife Jashuben at Borvad Falia, Bardoli. His father Surji Bijio, mother Jayana, younger brother Makubhai and sister Kamla were jointly residing in Shamaliamore Falia at Bardoli village.

As per the complaint, the marriage of his eldest sister Shakuben was performed with one Suman Abdul Gamit of village Chichpada, Taluka Navapura before about fifteen years. Shakuben resided with her husband at the village Chichpada for some time after marriage. His brother-in-law (sister's husband) Suman continued relation with his previous wife and so there being quarrel between his sister Shakuben and Suman's previous

wife off and on and hence Shakuben went to Bardoli from Chichpada before one year. Then Shakuben stayed with her parents for about three years. At that time his brother-in-law Suman was frequently visiting Shakuben. His sister Shaku had two children – one son viz Jitu and the other daughter viz Tini from Suman. Shakuben made a roof house in Mangi Falia behind Jalaram Temple, Bardoli for about last seven years and Shakuben was residing separately with her two children. She was doing miscellaneous labour work and was maintaining the house.

His sister Shaku started relation with Arvind Dhodia of Nogama Pardi for about last ten eleven months. Arvind kept Shakuben as his wife. He started staying in the roof house of Shaku and her daughter Tini aged seven years was residing with them. Her son Jitu was residing with her parents at Shamaliamore. Thereafter Arvind Dhodia started quarrelling with Shaku for small matters and regarding food and was also beating her.

On the day of filing of the complaint, some boys rushed at about 8 O' clock in the night from Shakuben's roof house in Mangi Falia to his house. At that time he was about to take dinner. One of the boys viz Vijay Bachu told him that 'Your brother-in-law (sister's husband) Arvind has beaten with something on the neck of Shakuben and Shakuben is bleeding'. So he and Babliben Balubhai who was residing beside him, both rushed to the roof house of his sister Shakuben. They saw that Shakuben was lying on the floor near the bath room outside her house and his niece Tini was beside her. He asked as to what had happened to Shaku? She was conscious but could not speak. A sound 'hun' was coming out from the throat. As it was dark due to night, he lighted a match stick and saw in its light that there was a wound on Shaku's neck and it was profusely bleeding. The clothes of Shakuben were smeared with blood. So he asked his niece Tini. So Tini said to him “my uncle Arvind has run away after giving knife blow on the neck of the mother”. So he and Babliben lifted his sister Shaku and brought her

in the court yard. One rickshaw was stopped and they took Shaku therein to Bardoli Sardar Hospital. A doctor examined Shaku in the hospital and declared Shaku dead. His niece Tini came to Sardar Hospital after some time. Upon asking her about this incident, Tini said to him “My mother Shakuben and I had gone to one Sarlaben's house for taking my frock in the evening. At that time my uncle Arvind arrived and caught my mother Shakuben by hand and dragged her to our roof house. I also went behind them. My uncle dashed me near our roof house and I fell down. My mother was pulled in the house. My uncle Arvind came out after some time and ran away outside the falia. My mother Shaku was shouting inside that, “Tini' I am dying.” Then my mother came out of the roof house and sat down outside. Again she got up and lay down near bath room. So I asked her as to what had happened. She said 'your uncle Arvind has given knife blow on my neck and I am very much aching'. My mother had kept one hand on the neck. On turning the hand, the clothes of my mother were smeared with blood. You came within

some time then.” Therefore he approached the police station for lodging a complaint. Arvind Dhodia, the assaulter with knife, was working as a watch man in a Sugar Factory, Bardoli. He came to know the cause of this incident from his niece Tini that 'On Sitlasatam when a relative of Arvind came to the house, Arvind asked Shakuben to prepare tea. But Shakuben said that it being the day of Sitlasatam, the hearth is not to be lighted. Arvind became excited on Shakuben and quarreled with her. He also threatened Shakuben on the very same day 'to kill her'. So Shakuben, being afraid, went with Tini to her parents house. So keeping grudge, my brother in law Arvind (sister's house) has killed Shakuben by giving knife blows on the neck.

2.2. Complaint for the aforesaid incident was lodged by Akubhai Surjibhai Gamit, on 9.9.1989 at 21:45 hours at Bardoli Police Station which has been registered by P.W.7, Pankajkumar Chandrashankar Joshi, PSI, vide CR No.I-193/89 for the offence under section 302 IPC and 135 of

BP Act. After registering the complaint, investigation was carried out. The investigating officer held the inquest on the dead body of Shakuben and thereafter the dead body was sent for autopsy. Panchnama of the scene of offence was prepared. Thereafter he recorded the statement of the witnesses and muddamal articles were sent to FSL. After receipt of the FSL as well as autopsy report and after the investigation was over as sufficient incriminating evidence was found against the accused, the accused was arrested on 14.4.1996. Thereafter he was charge sheeted before learned JMFC Bardoli for commission of offence under section 302 IPC and section 135 of BP Act. As the offence punishable under Section 302 IPC is exclusively triable by the Court of Sessions, the learned JMFC committed the case to the Sessions Court, Surat.

2.3. The learned Additional Sessions Judge, Surat Camp at Vyara to whom the case was made over for trial, framed charge against the accused

for commission of offence punishable under Section 302 IPC and Section 135 of BP Act. The charge was read over and explained to the accused. The accused pleaded not guilty to the charge and claimed to be tried. Therefore, he was put to trial by the learned Additional Sessions Judge, Surat camp at Vyara in Sessions Case No.195 of 1996.

2.4. In order to bring home the charge levelled against the accused the prosecution has examined as may as nine witnesses and relied upon their oral testimonies. The details of which are detailed in para 3 of the impugned judgment and order which are as under:

PW No	Name	Remarks	Exh. No	Page No
1	Khandubhai Bhikhabhai Patel	Panch witness (scene of offence)	9	40

PW No	Name	Remarks	Exh. No	Page No
2	Mahendrabhai Thakorbhai Patel	Panch witness (clothes of daughter -Tinaben)	11	44
3	Dr. Alok Krishna Chandak (injury on neck)	PM Notes	18	59
4	Jayaben Surjibhai	mother of deceased	20	69
5	Jitubhai Sumanbhai	Son of deceased	21	72
6	Tinaben Sumanbhai Gamit	Daughter of deceased (eye witness)	22	74
7	Pankajkumar Chandrashankar Joshi	PSI Bardoli Police Station in whose presence FIR was recorded and IO	25	74
8	Chhatrasinh Ballubhai Parmar	PSO Bardoli Police Station	31	88
9	Bhupatsinh Nanbha Sarviya	PI who arrested the accused on 14.4.1996	33	84

2.5. To prove the culpability of the accused,

the prosecution has also produced a number of documents and relied upon the contents of the same, the details of which are mentioned in para 4 of the impugned judgment and order. They are as under:

Sr. No.	Particulars	Ex. No	Page No
1	Panchnama of scene of offence and recovery of knife	10	41
2	Inquest Panchnama (admitted by accused)	12	45
3	Panchnama of clothes of Tinaben (daughter of deceased) (admitted by the accused	13	48
4	Panchnama of clothes of deceased Shakuben (admitted by accused)	14	50
5	FSL report	15	51
6	FSL (Serological report)	16	57
7	Postmortem notes	19	61
8	FIR (Complainant died during pendency of the trial and hence he was not examined).	26	82

2.6. After recording of the evidence of the witnesses was over, the trial court explained to the accused the circumstances appearing against him and recorded his further statement under

Section 313 of the Code. In his further statement, he denied the case of the prosecution in its entirety and stated that false case has been filed against him. However, he neither produced any evidence nor did he examine any witness in support of his defence.

2.7. On appreciation, evaluation, analysis and scrutiny of the evidence on record, trial court came to the conclusion that the prosecution has successfully established the complicity of the accused for committing murder of Shakuben as she died a homicidal death. The trial court held that offence against the accused under Section 302 of IPC is proved. Consequently, the trial court convicted the accused for the offence punishable under section 302 IPC and sentenced to undergo imprisonment for life and fine of Rs.400/- i.d., SI for one month but acquitted for commission of offence under section 135 of BP Act. This judgment and order has given rise to instant appeal at the instance of the accused.

3. Ms. Sadhna Sagar, learned advocate appointed by the Legal Aid Committee for the accused, has vehemently assailed the impugned judgment and order contending that in fact there is no eye witness who saw the accused inflicting blow on the deceased. However, the prosecution tried to project P.W.6, Tinaben, daughter of the deceased, as eye witness to the incident. A close scrutiny of the evidence of P.W.6, it can be seen that she has not witnessed the incident as she was out of the room at the relevant time and the incident had taken place inside the room. She has also contended that so far as P.W.4, Jayaben Surjibhai, mother of deceased and P.W.5, Jitubhai Sumanbhai, son of the deceased, are concerned, they are hear-say witnesses and they had not seen the accused inflicting knife blow on the deceased. Therefore, according to her, in the entire length and breadth of the prosecution case, complicity of the accused of committing murder of Shakuben has not been proved. However, the trial Court misdirected itself by considering the evidence of P.W.6, Tinaben as an eye witness

and recorded the conviction and sentence against the accused. It is also highlighted by her that the panch witness of the panchnama of the scene of the offence as well as panch witness of the clothes of Tinaben which were also stained with the blood of deceased Shakuben have not supported the prosecution case and therefore also the prosecution has failed to establish the charge levelled against the accused. She therefore submitted that the impugned judgment and order deserves to be quashed and set aside by allowing the appeal and thereby acquitting the accused of the offence with which he was charged.

Alternatively, it is also submitted by her that if the prosecution case is to be accepted, having regard to the fact that this was a case of only a single blow which proved to be fatal, the offence committed would be one of culpable homicide not amounting to murder. Therefore, if at all the conviction is to be upheld the same should be converted to one under Section 304 Part II IPC. The accused is arrested

on 14.4.1996 and since then he is in jail and therefore he has undergone more than 11 years sentence and therefore the custodial sentence may be treated as substantive sentence and he may be ordered to be released forthwith if his presence in connection with any other case is not required. She therefore urged to pass appropriate orders.

4. In response to the submissions made by Ms. Sadhna Sagar, learned advocate of the accused, Mr. AJ Desai, learned APP has supported the impugned judgment and order throughout. According to him, the prosecution has successfully established the charge levelled against the accused. The evidence of P.W.6, Tinaben, daughter of the deceased, is a star witness and she was very much present at the time of occurrence of the offence and in her presence the accused took the deceased inside the room and thereafter committed the crime. It is also highlighted by him that it is settled principle of law by catena of decision of the Supreme Court that evidence of

solitary eye witness is sufficient to prove the complicity of the accused if his/her evidence is of sterling quality and unimpeachable. The prosecution has successfully established the complicity of the accused from the evidence of solitary eye witness. Her evidence not only inspires confidence but it is also trustworthy and unimpeachable. Therefore, the impugned judgment and order of conviction and sentence recorded against the accused does not call for interference in this appeal.

Replying to the contention that the offence in question is one under section 304 Part II IPC, he has submitted that in this regard the choice of weapon, the part of the body on which the blow is inflicted and the intensity of the blow are all relevant considerations. He has submitted that the accused was armed with a knife and had inflicted the blow on the neck which is a vital part of the body with considerable force; hence, the intention to kill is evident. Hence, the accused is not entitled to the benefit of

Section 304 Part II IPC.

In conclusion, he has submitted that the appeal being totally devoid of any merit deserves to be dismissed and the order of conviction and sentence requires to be confirmed. He therefore urged to dismiss the appeal.

5. This Court has considered the submissions advanced by the learned advocates appearing for the parties and perused the impugned judgment and order. This Court has undertaken a complete and comprehensive appreciation of all vital features of the case and the entire evidence on record, which is read and re-read by the learned advocates of the parties with reference to broad and reasonable probabilities of the case. This Court has examined the entire evidence on record for itself independently of the learned Judge of the trial Court and considered the arguments advanced on behalf of the accused and infirmities pressed, scrupulously with a view to find out as to whether the trial court has rightly recorded

the order of conviction and sentence.

6. So far as the death of the deceased being a homicidal one, the same has not been disputed by the learned advocate for the accused, hence, we need not discuss the same in detail. Suffice it to say that the prosecution has succeeded in establishing that the death of Shakuben was a homicidal one through the evidence of PW 3, Dr. Alok Krishna Chandak, Ex.18, who has performed post mortem on the deadbody of deceased Shakuben as well as prepared the post mortem note Ex.19 and inquest panchnama Ex.12. P.W.3, Dr. Alok Chandak in his oral testimony testified that on 10.9.1989, he was on duty as Medical Officer at Primary Health Centre, Umra. The dead body of Shakuben was brought by Shivaji Bajirao, Police Constable of Bardoli Police station for autopsy. He examined the dead body and noted the following external injuries on the dead body of Shakuben:

Penetrating wound on right side neck just above the RV stern clavicular joint. Triangular inside

with the skin on inferio-lateral.

Length Superior margin – 1 cm, outer margin – 1 cm and inferio lateral – 1 cm.

Depth – 20” reaching piercing partial cutting the right subclavical vein its junction with right jugular vein to form Rv.

Direction – Wound piercing downwards and medial to lateral side anterior to posterior side. Wound full of clots of blood and dried blood present on clothes whole of lower body. No fracture detected clinically.

According to this witness the cause of death was shock due to haemorrhage due to penetrating wound on right side neck extending up to and penetrating right sub clavical vein at junction with right internal jugular vein.

A perusal of the oral testimony of P.W.3, Dr. Alok Chandak Ex.18 and postmortem notes Ex.19 it is clear that the deceased died because of shock due to haemorrhage due to penetrating wound on right side neck extending up to and penetrating right sub clavical vein at junction

with right internal jugular vein. Therefore, in view of the aforesaid evidence, it has to be held that the deceased died a homicidal death and the trial court has rightly come to the conclusion that the deceased died a homicidal death and therefore we confirm the said finding and hold that the deceased died a homicidal death.

7. Now the next question which is required to be answered by us is whether the accused is the author of the injuries caused to the deceased.

7.1. In this connection, the prosecution mainly relied upon the oral testimony of star witness P.W.6, Tinaben, daughter of deceased, Ex.22. She has inter alia testified that at the time of incident her parents and she were staying in Mangi Faliya. Her mother's name is Shakuben. Her father Sumanbhai was residing at Chichpada. Her brother Jitu and Meenaben are residing with her grand father Surjibhai Viriabhai and grand mother. Her mother separated from her father ten years before the incident. She does not remember

the date of incident but it happened during ninth month of the year 1989. At the time of incident, her mother had come to the house of her grand father and mother after separation from her father Suman before ten years from Chichpada of Navapura. Grand father and mother means her mother's parents.

7.2. She further testified that thereafter her mother had relation with Arvindbhai and her mother came to reside with them at their roof house in Bardoli village prior to the incident. Her elder brother Jitu went to stay with her mother's father Surjibhai. She was calling Arvindbhai as uncle. Arvindbhai was serving in a Sugar Factory at Bardoli. She does not know what was he working? She also does not know as to by which other name Arvindbhai was called. Arvindbhai stayed fairly for two three months in the beginning. He was quarrelling with her mother and beating her also. One of her uncle's friend came in the morning of Sitlasatam prior to the incident. Her mother said, 'there is no kerosene

and wooden sticks for lighting the hearth' and refused to prepare tea. So her uncle Arvind became angry. At that time her grand father and grand mother were present. Her uncle told her mother, 'I shall kill you'. So her mother went to stay with her grand father at Shamaliya Faliya. She and her mother came to their old house. Her mother and uncle also stayed for a day. Her mother and she went to bring her frock which was newly stitched.

7.3. She further testified that when they were returning with the said frock, Arvind uncle met on the road and he pushed her mother and took her towards their house in Mangi Faliya. Arvind pushed her mother and took her in the house and also pushed her from the house. She was driven out when she was going to her mother. Arvind closed the door of the house. After sometime her mother shouted to 'save' from inside. Arvindbhai opened the door after sometime and ran away. Her mother came out after him from the house and fell down at the door. At that time she was sitting on

a otta outside of her house. She rushed to her mother. She saw that the neck of her mother was wounded and it was bleeding. She saw that the blood was dropped on her mother's cloth and on the floor.

7.4. It is further testified by her that in the meantime, her maternal uncle's son Vijay was passing by. She shouted and called him and Vijay came there, she asked Vijay to call her maternal uncle. Thereafter her maternal uncle came and lifted her mother and took her to hospital. She told about the incident to her maternal uncle at that time. Her mother expired on the way to the hospital. She does not know as to whether anybody else had come with her maternal uncle because it was a fact before ten years. Her mother was taken to Sardar Hospital Bardoli. As substantial time has passed, she does not know as to whether she was taken in any vehicle. Thereafter her brother Jitu and she went in a rickshaw to Sardar Smarak Hospital, Bardoli where she saw the dead body of her mother. Thereafter her grand mother Jayaben

had come. As her mother was in her lap, her clothes became smeared with blood and the police seized the said cloth.

7.5. She further testified that she knows Arvind uncle who is present in the court. The witness identified the accused Arvindbhai by pointing out with a finger. Police recorded her statement and also recorded her further statement. She identified the accused in her further statement before the police. She has shown muddamal knife which is not of their house.

7.6. It may be noted that this witness was subjected to cross-examination by the learned advocate of the accused at length and in great detail. Lot many suggestions were put to her that she has not witnessed the incident and she was outside the house when the alleged incident happened. Suggestions were also put that she had in fact not witnessed the incident and she is a got up witness. She has repelled all the suggestions put to her and withstood the test of

cross examination successfully.

8. On reappraisal of the evidence of this witness, it is clear that the marriage of Shakuben was performed with Suman Abdul Gamit and out of the said wedlock Tinaben and Jitu are born. Thereafter they separated. Thereafter Shakuben started living with the accused Arvind, who is called as uncle by P.W.6, Tinaben. Initially for about three months there was cordial relation between Shakuben and Arvind and thereafter they started quarrelling with each other. The accused told Shakuben on the Sitlasatam day when a relative of Arvind came to the house to prepare tea. But Shakuben said that there being the day of Sitlasatam the hearth is not to be lighted. The accused got enraged and he threatened to kill her and after some days, the accused took Shakuben in the house and when Tina also tried to enter in the room, he pushed her outside and closed the door and inflicted blow with knife on the neck of Shakuben and thereafter Shakuben raised voice to rescue her and

thereafter the accused opened the door and ran out of the house. Tinaben found Shakuben in injured condition. She was injured on the neck and she was profusely bleeding. According to us the evidence of Tinaben is sufficient to come to the conclusion that the accused after inflicting knife blow on the neck of Shakuben caused serious injuries which were sufficient in ordinary course of nature of cause death.

9. The prosecution has thereafter examined and relied upon the evidence of P.W.4, Jayaben Surjibhai, mother of the deceased, Ex.20 and L.W.5, Jitubhai Sumanbhai, son of the deceased, Ex.21. On a perusal of their evidence, it is seen that they were not present at the time of the incident. However, it is proved from their oral testimonies that the accused and the deceased had frequent quarrels and their relation was not cordial. It is also clear from the evidence of P.W.4, Jayaben that prior to the incident, the accused asked the deceased to prepare tea on the Sitlasatam and the deceased

refused to prepare tea as there was no tea, sugar and kerosene in the house as well as it was Sitlasatam day on which hearth was not to be lighted. Therefore, so far as the incident of refusing to prepare tea is concerned, evidence of P.W.6 gets corroboration from the evidence of P.W.4, Jayaben and their evidence is consistent. Therefore there is no reason to discard this piece of evidence with regard to taking up of frequent quarrel between the accused and the deceased.

10. The prosecution thereafter has examined and relied upon the evidence of P.W.7, Pankajkumar Chandrashankar Joshi, PSI who recorded the FIR on the basis of the complaint filed by Akubhai Surjibhai, brother of the deceased who has died subsequently after filing of the FIR and from the evidence of P.W.7, Pankajkumar, the said complaint is exhibited at Ex.26.

11. On overall reappraisal of the evidence on record, it is clear that the accused has

inflicted the injury on the neck of the deceased with a knife, which is a vital part of the body and a single blow was sufficient in the ordinary course of nature to cause death as it was inflicted on the vital part of the body which was a penetrating wound on right side neck extending up to and penetrating right sub clavical vein at junction with right internal jugular vein. Therefore, in our opinion, the prosecution has successfully established the complicity of the accused in commission of the offence of murder of Shakuben.

12. It is settled position of law by catena of decision of the Supreme court that evidence of sole eye witness if it is of sterling quality and unimpeachable, conviction can be recorded on the basis of it. In the instant case, evidence of P.W.6, Tinaben, is of sterling quality, unimpeachable, inspiring confidence and being trustworthy, reliance can be placed upon her oral testimony to base conviction of the accused for commission of the offence of murder of

Shakuben.

13. The contention that this is a case of a single blow, which has proved to be fatal, hence, the offence committed would be one amounting to culpable homicide not amounting to murder cannot be accepted. The law in this regard is well settled. In the case of State of Rajasthan v. Dhool Singh (2004) 12 SCC 546, the High Court had found that the prosecution had not established that the respondent had acted with an intention of causing death of the deceased, the Apex Court noted that the same was based on the fact that the respondent had dealt a single blow, which according to the High Court, took the act of the respondent totally outside the scope of Exception I to Section 300 IPC. Disagreeing with the findings of the High Court, the Supreme Court held that the number of injuries is irrelevant. It is not always the determining factor in ascertaining the intention. It is the nature of injury, the part of the body where it is caused, the weapon used in causing such injury, which are

the indicators of the fact whether the respondent caused the death of the deceased with an intention of causing death or not.

13.1. Applying the aforesaid principle to the facts of the present case, considering the choice of weapon, namely the knife which is a lethal weapon; the vital part of the body on which the blow was inflicted, namely, the neck, the intensity of the blow which has resulted in penetrating wound on right side neck extending up to and penetrating right sub clavical vein at junction with right internal jugular vein, any reasonable person with any stretch of imagination can come to the conclusion that such injury on such a vital part of the body with such a weapon would cause death. The injury sustained by the deceased not only exhibits the intention of the accused in causing the death of the victim, but also the knowledge of the accused as to the likely consequence of such attack which could be none other than causing the death of the victim. Moreover, the learned advocate for the accused

has not stated any circumstance so as to point out the applicability of benefit of any of the Exceptions to section 300 IPC. In the circumstances, the contention raised by the learned advocate for the accused that this is a case of solitary blow, hence, the same amounts to culpable homicide not amount to murder, cannot be accepted.

14. On overall reappraisal of the evidence on record, it is clear that the complicity of the accused for commission of offence of murder of Shakuben is duly established beyond reasonable doubt.

15. We find ourselves in complete agreement with the finding, ultimate conclusion and the resultant order of conviction and sentence recorded by the trial court and according to us no other finding or conclusion could have been reached by the trial court except the one reached by it on the facts and circumstances of the case with which we agree and according to us it is

required to be confirmed.

16. Seen in the above context, there is no reason to interfere with the impugned judgment and order of conviction and sentence passed by the trial court and hence the appeal lacks merit and deserves to be dismissed by confirming and maintaining the conviction and sentence passed by the trial court.

17. For the foregoing reasons, the appeal fails and accordingly it is dismissed. Resultantly judgment and order of conviction and sentence dated 9.7.1999 passed by the learned Additional Sessions Judge, Surat camp at Vyara in Sessions Case No. 195 of 1996 convicting the accused for commission of offence under Section 302 IPC and sentencing to under go imprisonment for life and fine of Rs.400/- i.d., SI for one month is hereby confirmed and maintained.

(A.M. Kapadia, J.)

(Harsha Devani, J.)

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